

1 Law Offices of Erik Graeff, P.C.  
2 2125 N. Flint Ave.  
3 Portland, OR 97227  
4 (971) 228-0014

5 UNITED STATES BANKRUPTCY COURT

6 FOR THE DISTRICT OF OREGON

7 In re )  
8 )  
9 Philip Michael Goldfeld ) Case No.: 15-34500  
10 Anne Ashton Goldfeld )  
11 Debtors. )  
12 )  
13 Philip Michael Goldfeld ) Adv. Proc. No.:15-03212-rld  
14 Anne Ashton Goldfeld )  
15 Plaintiffs, ) PLAINTIFF'S RESPONSE TO  
16 vs. ) DEFENDANT GRETCHEN STEINER  
17 ) PAN'S MOTION TO DISMISS  
18 ) PURSUANT TO F.R.C.P. 12(b)(6)  
19 )  
20 Jeffrey A. Long, Trustee of )  
21 Elizabeth Steiner Trust )  
22 and )  
23 )  
24 Gretchen Steiner Pan )  
25 )  
26 Defendants. )

27 COMES NOW, Plaintiffs, by and through their attorney, Erik  
28 Graeff, and respond to Defendant Gretchen Stienner Pan's motion  
29 to dismiss.

30 BACKGROUND

31 Plaintiff filed this adversary proceeding case for  
32 violation of the automatic stay against two defendants, a

33 RESPONSE TO MOTION TO DISMISS- 1

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(503) 389-7939 fax

1 trustee and beneficiary of the trust. Both the trustee and  
2 beneficiary are listed on Schedule F of Plaintiff's bankruptcy  
3 petition filed 9/23/15.

4  
5 POINTS AUTHORITY AND ARGUMENT

6 It is well established that "[c]ourts must consider the  
7 complaint in its entirety, as well as other sources courts  
8 ordinarily examine when ruling on Rule 12(b)(6) motions to  
9 dismiss[.]" *Dunn v. Castro*, 621 F.3d 1196, 1205 ((quoting  
10 *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322  
11 (2007))

12 *Magulta v. Samples*, 375 F.3d 1269, 1274-75 (11th Cir. 2004)  
13 (when reviewing a motion to dismiss for failure to state a  
14 claim, courts should read the complaint in its entirety); 5  
15 Wright & Miller, Federal Practice and Procedure § 1286 (3d ed.  
16 2004); 5B Wright & Miller, Federal Practice and Procedure § 1357  
17 (3d ed. 2004).

18 Consideration of the Complaint as a whole demonstrates that  
19 it meets the requirements established under the Federal Rules.  
20 "[A] complaint must contain sufficient factual matter . . . to  
21 'state a claim for relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (quoting *Bell*  
22 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). This  
23 standard is met where "the plaintiff pleads factual content that  
24 allows the court to draw the reasonable inference that the  
25

1 defendant is liable for the misconduct alleged." *Iqbal*, 129  
2 S.Ct. at 1949 (citing *Twombly*, 550 U.S. at 556).

3 A. COMPLAINT SATISFIES THE PLEADING STANDARD

4 Here, the Complaint presents detailed allegations of  
5 Plaintiffs' assertions sufficient to put defendant on notice for  
6 purposes of discovery. The allegations more than satisfy the  
7 federal pleading requirements. A review of the complaint as a  
8 whole demonstrates that Plaintiff is in no way relying upon mere  
9 legal conclusions or unreasonable inferences of the facts.

10 B. COURT MUST TAKE AS TRUE ALL ALLEGATIONS OF MATERIAL FACT AND  
11 CONSTRUE THEM IN LIGHT MOST FAVORABLE TO PLAINTIFF

12 Under FRCP 12(6)(b), "the bankruptcy court must take as  
13 true all allegations of material fact and construe them in a  
14 light most favorable to the nonmoving party," *In re Stoll*, 252  
15 B.R. 492 (B.A.P. 9th Cir. 2000). Dismissal is appropriate "only  
16 if it appears to a certainty that the plaintiff would be  
17 entitled to no relief under any state of facts that could be  
18 proved." *NL Industries V. Symington*, 792 F.2d 896, 898 (9th Cir.  
19 1986).

20 Ms. Pan as the sole beneficiary of the trust is a  
21 creditor. As a creditor, her action at the 341 hearing and her  
22 posting of the negative October 23, 2015 Oregonian online  
23 comments constitute a willful violation of the automatic stay.  
24 It is not a certainty that Ms. Pan is not a creditor. It is not  
25

1 a certainty that her actions at the 341 hearing and her online  
2 postings are not a willful violation of the stay.

3 CONCLUSION

4 Plaintiff asks the court to deny the Defendant's motion to  
5 dismiss in its entirety. Plaintiff alternatively asks for leave  
6 to amend the complaint.

7  
8 Dated: February 16, 2016

9 Law Offices of Erik Graeff P.C.

10 /s/ Erik Graeff  
11 Erik Graeff, OSB #102169  
12 Attorney for Plaintiffs  
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CERTIFICATE OF SERVICE

I hereby certify that true copies of PLAINTIFF'S RESPONSE TO DEFENDANT GRETCHEN STEINER PAN'S MOTION TO DISMISS were served in the following manner and on the following parties on the date indicated below:

*Via regular mail*, postage prepaid in a sealed envelope addressed to;

Nicholas J. Henderson  
Motschenbacher & Blattner LLP  
117 SW Taylor St. Ste 300  
Portland, OR 97204

*Via ECF on:*

US Trustee, Portland  
USTPRegion18.PL.ECF@usdoj.gov

DATED: February 16, 2016

Law Offices of Erik Graeff, P.C.  
/s/ Erik Graeff  
Erik Graeff, OSB #102169  
2125 N. Flint  
Portland, OR, 97227  
Ph. (971)228-0014  
Attorney for Plaintiff